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Total Number of Pages In This Submission

5

Application Number

10/642,860

Filing Date

August 18, 2003

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First Named Inventor

Paul S. White et al.

Art Unit

1745

OCT 5 2005

Examiner Name

J Maples

Attorney Docket Number

TN-1631C

**ENCLOSURES (check all that apply)**

- Fee Transmittal Form  
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 Amendment / Reply  
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 Affidavits/declaration(s)  
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- Drawing(s)  
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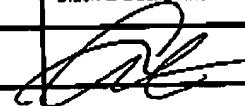
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(please identify below):  
Response to Office Action

**Remarks****SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT**

Firm

Black &amp; Decker Inc.

Signature



Printed Name

Adam Ayala, Esq.

Date

October 5, 2005

Reg.  
No.

38,373

**CERTIFICATE OF TRANSMISSION/MAILING**

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Adam Ayala, Esq.

Date

October 5, 2005

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Serial No. 10/642,860  
UTILITY PATENT

OCT 05 2005

Resp to Off Act mailed on July 18, 2005  
B&D No. TN-1631C

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Paul S. WHITE et al.

Serial No.: 10/642,860

Examiner: J. Maples

Filed: August 18, 2003

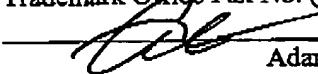
Group Art Unit: 1745

For: BATTERY PACK

Assistant Commissioner for Patents  
Washington, DC 20231

RESPONSE TO OFFICE ACTION

I, Adan Ayala, PTO Reg. No. 38,373, hereby certify that this correspondence is being facsimile transmitted to the Patent and Trademark Office Fax No. (703) 872-9306 on Oct. 5, 2005

  
Adan Ayala

Dear Sir:

The following is in response to the Office Action mailed on July 18, 2005.

Currently in the above-identified application therefore are Claims 48-65.

The Examiner rejected Clams 48, 51 and 58-65 under 35 USC § 102(e) as being anticipated by US Patent No. 5,977,746 ("Hershberger"). This rejection is respectfully traversed.

Claim 48 calls for a battery pack comprising a housing comprising a first portion having a first floor and first and second walls connected to the first floor, and a second portion having a second floor and third and fourth walls connected to the second floor, where the first and second floors are non-coplanar, a plurality of cells disposed within the housing, at least two terminals electrically connected to the cells, and a first latching mechanism disposed on the housing for

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latching the battery pack to a cordless device, said first latching mechanism comprising a first latch and a first button connected to the first latch for moving the first latch between unlatching and latching positions.

Admittedly, Hershberger has a housing, a plurality of cells disposed within the housing, at least two terminals electrically connected to the cells, and a first latching mechanism disposed on the housing for latching the battery pack to a cordless device. Hershberger however does not disclose a housing having first and second floors.

The Examiner has alleged that Hershberger has two floors: "the floor of member 24 while the second portion is the upper 'floor' of top housing 26—the uppermost portion of 26 on which the first latching mechanism 45 including a button is located." Applicants submit that interpreting the top surface of the Hershberger battery as a "floor" is an unreasonable interpretation. Accordingly, Hershberger should not be interpreted to include the two claimed floors.

Under the MPEP, claims are interpreted "as broadly as their terms reasonably allow." MPEP § 2111.01. In other words, the words of the claim "must be given their plain meaning unless applicant has provided a clear definition in the specification." *Id.* (citing *In re Zletz*, 893 F.2d 319, 321, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989)). "Plain meaning" is the "customary and ordinary" meaning given to the term by a person of ordinary skill in the art. MPEP § 2111.01(II).

In the present case, "floor" has not been defined in the specification. However, such phrase can be easily understood by a person of ordinary skill in the art. Attached is a print-out of the definitions of "floor" according to the Merriam-Webster's Online Dictionary ([www.m-w.com](http://www.m-w.com)).

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According to such definition, "floor" means "a lower limit" or "base." Based on such plain meaning, a person skilled in the art would not understand "floor" to be an upper surface of a battery pack. Accordingly, Hershberger does not have the first and second floors, as alleged by the Examiner.

By contradistinction, Claim 48 requires a battery pack with "a first floor... and a second portion having a second floor... where the first and second floors are non-coplanar." Since Hershberger does not disclose these elements, it cannot anticipate Claim 48 and its dependent claims.

The Examiner rejected Claims 48-65 under the doctrine of obviousness-type double patenting as being unpatentable over Claims 1-16 of US Patent No. 6,641,950. In response, Applicants promise to file a terminal disclaimer upon allowance of the claims, rendering the present rejection moot.

Applicants believe the application to be in condition for formal allowance. Accordingly, allowance of Claims 48-65 is respectfully requested.

No fee is believed to be due. Nonetheless, the Commissioner is authorized to charge payment of any fees due in processing this amendment, or credit any overpayment to Deposit Account No. 02-2548.

Respectfully submitted,



Adam Ayala, Reg. No. 38,373  
Attorney for Applicants  
Phone No. (410) 716-2368

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Merriam-Webster  
Dictionary  
Thesaurus

14 entries found for **floor**. The first 10 are listed below.  
To select an entry, click on it. For more results, [click here](#).

floor[1,noun]  
floor[2,transitive verb]  
first floor  
floor exercise  
floor lamp  
floor leader



floor

Main Entry: **1floor**  
Pronunciation: 'flor, 'flor

Function: noun

Usage: often attributive

Etymology: Middle English *flor*, from Old English *floR*; akin to Old High German *fluor* meadow, Latin *planus* level, and perhaps to Greek *planasthai* to wander

1 : the level base of a room

2 a : the lower inside surface of a hollow structure (as a cave or bodily part) b : a ground surface <the ocean *floor*>

3 a : a structure dividing a building into stories; also :

STORY b : the occupants of such a floor

4 : the surface of a structure on which one travels <the *floor* of a bridge>

5 a : a main level space (as in a stock exchange or legislative chamber) distinguished from a platform or gallery b : the members of an assembly <took questions from the *floor*> c : the right to address an assembly <the senator from Utah has the *floor*>

6 : a lower limit : BASE

- floored *adjective*

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